

REMARKS

Status of the Claims

Claims 5, 11, 12, 36, 40, 49, 60 and 61 are currently pending. Claim 61 is new. Support for new claim 61 can be found at page 18, lines 4-6. Claims 5, 11, 12, 36, 40 and 49 have been amended. No new matter has been added as a result of these amendments. Claims 1-4, 9-10, 13, 37, 41, 46 and 50-54 have been cancelled.

Applicants thank Examiner Xie for his helpful comments for appropriately amending the claims.

Rejection of claims under 35 U.S.C. Section 101

The Office has rejected claims 1-5, 9-11, 49, 52 and 53 under 35 U.S.C. Section 101 for being directed to non-statutory subject matter. Applicants respectfully traverse.

Claims 1-4, 9, 10, 52 and 53 have been cancelled without prejudice. Applicants reserve the right to prosecute these claims in one or more continuation applications. Applicants have amended claims 5, 11 and 49 to recite "isolated" antibodies, as suggested by the Office. The rejection is therefore obviated by amendment and Applicants respectfully request that this rejection be withdrawn.

Rejection of claims under 35 U.S.C. Section 112

The Office has rejected claims 1-4, 9, 10, 12, 13, 36, 37, 40, 41, 46, 49-54 and 60 under 35 U.S.C. Section 112, first paragraph, as lacking enablement. Applicants respectfully traverse the rejection.

While not agreeing with the Examiner, in order to expedite prosecution, claims 1-4, 9, 10, 13, 37, 41, 46 and 50-54 have been cancelled without prejudice. Applicants reserve the right to pursue these claims in one or more continuation applications. Additionally, claims 12, 36 and 49 have been amended (indicating the sequences for both heavy and light chains, as well as indicating the ATCC accession number for Ab12 for claim 49), thus obviating the rejection. In view thereof, Applicants respectfully request that the rejection be withdrawn.

Regarding amended claim 49, Applicants herewith enclose a Declaration as to a Deposit made Under the Budapest Treaty (Declaration), by Ms. Dianne Casuto, one of the attorney's of record in the above application. In this Declaration, Ms. Casuto states that a deposit of a cell line expressing Ab12 was made pursuant to the Budapest Treaty at the American Type Culture Collection (ATCC) on October 1, 2003 and that this deposit was designated PTA-5554 and that this cell line will be available during the pendency of the above-identified patent application, upon issuance of the patent that all restrictions as to the public available of this deposit will be irrevocably and without restriction or condition removed, the deposit will be

maintained for a period of 30 years or 5 years after the last request or for the effective life of the patent, whichever period is longer, the deposit met the requirements of 37 CFR Sections 1.801-1.809 (including being tested for viability) and that the deposit will be replaced should it ever become non-viable.

Additionally, claim 49 has been amended to recite the ATCC Accession No. PTA-4555. The Office has requested amending the application to include the deposit information, including accession number, date of deposit, the name and address of the depository, and a description of the deposited material sufficient to specifically identify it and permit examination. Applicants note that the specification already contains this information, "Cell lines expressing Abl2 and Ab467 antibodies were deposited with the American Type Culture Collection (ATCC), 10801 University Boulevard, Manassas, Virginia 20110, under the terms of the Budapest Treaty, on September 30, 2003 and were accorded accession numbers PTA-5554 and PTA-5555" (*see* page 34, lines 31 to 34). Therefore, Applicants in good faith believe the specification requires no amendment to enable Ab12.

The Office has also rejected claims 2, 3-5, 9-13, 36, 37 and 54 under 35 U.S.C. Section 112, second paragraph for being indefinite. Claims 2-4, 9, 10, 13, 37 and 54 have been cancelled without prejudice. Applicants reserve the right to pursue these claims in one or more continuation applications. Claims 5, 11, 12 and 36 have been amended. Therefore, in view of these claim amendments, the rejection is obviated and the rejection should be withdrawn.

Rejection of claims under 35 U.S.C. Section 102

The Office has rejected claims 1, 2, 46, 49-54 and 60 under 35 U.S.C. Section 102(b) as being anticipated by Elliot *et al.* (US Patent No. 5,885,574). Applicants respectfully traverse.

While not agreeing with the Examiner, in order to expedite prosecution, claims 1, 2, 46, and 50-54 have been cancelled without prejudice. Applicants reserve the right to pursue these claims in one or more continuation applications. Claim 49 has been amended to specifically recite Ab12. Claim 60 depends from claim 49, and is therefore also appropriately amended.

The antibody of Elliot *et al.*, mAb 73, is a murine mAb that recognizes a linear portion of the EPOR (SE-3 peptide) and has minimal activity in stimulating erythropoiesis activity in animal models. Ab12 is a fully human Ab that does not recognize the linear epitope of mAb 73. Also unlike mAb 73, Ab12 has potent erythropoietic activity in animal models.

Therefore, because Elliot *et al.* do not teach each and every limitation of the claims, this rejection is now believed to be moot and should be withdrawn.

REQUEST FOR RECONSIDERATION

Reconsideration and withdrawal of all claim rejections are respectfully requested. Applicants believe that the present application is in condition for allowance. Should the Examiner have any questions or would like to discuss any matters in connection with the present application, the Examiner is invited to contact the undersigned at

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